EXHIBIT A

INDEX OF MATTERS FILED

Exhibit	Contents	Description
A	An index of matters being filed	Attached.
В	All executed process in the case	Attached.
С	Pleadings	Plaintiff's Original Petition & Request for Disclosure & Requests for Production; Defendant's Original Answer.
D	All orders signed by the state judge	None at the time of removal.
Е	The docket sheet	Attached.
F	A list of all counsel of record, including addresses, telephone numbers and parties represented	Attached.

EXHIBIT B

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	CITATION C	ORPORATE		
THE STATE OF TEXAS County of Harris	•			5
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ILIA FOX,

PLAINTIFF

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IN THE 234TH JUDICIAL DISTRICT COURT

VS.

WEEKLEY HOMES LP D/B/A DAVID
WEEKLEY HOMES,

DEFENDANT

AFFIDAVIT OF SERVICE

BEFORE ME, the undersigned authority, on this day appeared, EARBARA STINNETT, personally before me and stated under oath as follows:

My name is **BARBAR** STINNETT. I am over the age of eignteen (18), I am not a party to this case, and have no interest in its outcome. I am a private process server authorized by and through the Supreme Court of Texas, am in all ways competent to make this affidavit, and this affidavit is based on personal knowledge. The facts stated herein are true and correct.

ON Thursday, February 10, 2011 AT 09:30 AM - CITATION CORPORATE TOGETHER WITH PLAINTIFF'S CACIINAL PETITION & REQUEST FOR DISCLOSURE & REQUESTS FOR PRODUCTION CAME TO HAND.

ON Thursday, February 10, 2011 AT 10:11 AM - THE ABOVE NAMED DOCUMENTS WERE DELIVERED TO: WEEKLEY HOMES LP (D/B/A DAVID WEEKLEY HOMES). BY DELIVERING TO ITS REGISTERED AGENT CORPORATION SERVICE COMPANY D/B/A ČSĆ LAWYERS INCORPORATING SERVICE COMPANY, BY DELIVERING TO ITS DESIGNALED AGENT: SUE VER FREES AT 211 EAST 7TH ST SUITE 620, AUSTIN TX. 78701 BY PERSONAL SERVICE.

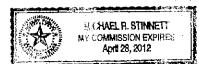
FURTHER AFFIANT SAYETH HOT

BARBAHA STINNETT, Affiant (IO #SCH 1181)

Before me personally appeared the above-named affiant, who, being first duly sworn, stated upon oath that the above-stated facts are true and correct and within his or her personal knowledge, and subscribed the same on this $\angle O$ day of

Echruan 2011.

Notary Public In And for the State of Texas



DocID: 196850-1

Case 4:11-cv-00816 Document 1-1 Filed in TXSD on 03/07/11 Page 6 of 26



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it applies on this date.

Witness my official hand and send of office this February 23, 2011

Certified Document Number:

47313963

Chris Daniel, DISTRICT CLERK

HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seaf please e-mail support@hcsfstrictclerk.com

EXHIBIT C

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2011-06082 / Court: 234

Chris Daniel - District Clerk **Hams County** ED101J016155118 CAUSE NO. By: Nelson Cuero

Filed 11 January 28 P2:39

ILIA FOX IN THE DISTRICT COURT OF 00 00 00 00 00 00 00 00 00 Plaintiff, VS. HARRIS COUNTY, TEXAS WEEKLEY HOMES LP d/b/a DAVID WEEKLEY HOMES JUDICIAL DISTRICT Defendant. PLAINTIFF'S ORIGINAL PETITION & REQUEST FOR DISCLOSURE & REQUESTS FOR PRODUCTION

TO THIS HONORABLE COURT:

Plaintiff Ilia Fox respectfully files this Original Petition and Request for Disclosure and Requests for Production as follows:

PLAINTIFF'S ORIGINAL PETITION

I. DISCOVERY LEVEL

Plaintiff intends to conduct discovery under Level 2 of Rule 190.3 of the Texas 1.1 Rules of Civil Procedure and affirmatively pleads that it seeks monetary relief aggregating more than \$50,000. Plaintiff reserves the right to seek modification to the discovery control plan pursuant to Rule 190.5 of the Texas Rules of Civil Procedure.

II. PARTIES

- 2.1 Plaintiff Ilia Fox is a Texas resident.
- Defendant Weekley Homes, L.P., d/b/a David Weekley Homes, is an entity 2.2 doing business in Harris County, Texas. Defendant's principal office is located at 1111 North Post Oak Road, Houston, Texas 77055 in Harris County. Defendant may be served with process

by serving its registered agent, Corporation Service Company, d/b/a/ CSC - Lawyers Incorporating Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701.

III. JURISDICTION AND VENUE

- 3.1 The damages sought by Plaintiff, exclusive of interests and costs, exceed the minimum jurisdictional limits of the Court.
- 3.2 Venue is proper in this county because all or a substantial part of the events or omissions giving rise to this cause of action arose in this county and Defendant maintains a principal office in this county.

IV. FACTUAL BACKGROUND

- 4.1 Plaintiff was employed by Defendant as a Sales Consultant for four and a half years until her wrongful termination in August 2009.
- 4.2 During Plaintiff's employment with Defendant, she received multiple promotions, including a promotion from Sales Associate to Sales Consultant, then to Lead Consultant, and then to Senior Sales Consultant. Plaintiff won numerous performance awards, sold many homes, had outstanding customer survey reviews and received multiple raises and promotions.
- 4.3 In the summer of 2009, Plaintiff began experiencing a serious health condition and began seeing doctors to obtain a diagnosis.
- 4.4 In July 2009, Plaintiff contacted Defendant's human resources department for information about taking a leave of absence for a serious health condition in accordance with the Family and Medical Leave Act. Plaintiff was undergoing extensive psychological testing for depression, including postpartum depression. Plaintiff's coworkers were aware that she was seeing a doctor for her health condition and was undergoing psychological testing.
- 4.5 On August 6, 2009, Plaintiff's doctor recommended that she take a leave of absence from work to seek immediate treatment for her severe depression. That same day,

Plaintiff requested the appropriate forms from Defendant's human resources department to take leave. On Friday, August 7, 2009, Plaintiff informed her manager that she would be taking a 12-week leave of absence for medical treatment. On Monday, August 10, 2009, Defendant terminated Plaintiff's employment without prior warning.

- 4.6 Prior to her termination, Plaintiff had never received a written warning or been placed on any type of probation. To the contrary, Plaintiff had received awards, promotions and raises. It was only after notifying Defendant that a leave of absence was requested that Plaintiff was terminated. Defendant's termination of Plaintiff was based on false and pretextual reasons.
 - 4.7 Plaintiff was unemployed for a year after Defendant terminated her employment.

V. CAUSES OF ACTION: VIOLATIONS OF FMLA

- 5.1 Plaintiff asserts Paragraphs 4.1 through 4.7 herein and incorporates those statements by reference here.
- 5.2 Defendant's termination of Plaintiff violated the Family and Medical Leave Act ("FMLA"), 29 U.S.C. section 2601, et. seq. Plaintiff suffered from serious medical problems, for which she sought leave under the FMLA to obtain treatment.
- 5.3 Plaintiff attempted to exercise her rights under the FMLA. Based on the above facts, Defendant interfered with, denied, and restrained Plaintiff's ability to exercise her rights under the FMLA, in violation of 29 U.S.C. section 2615(a)(1). Based on the above facts, Defendant discriminatorily terminated Plaintiff in retaliation for her attempt to obtain FMLA leave, in violation of 29 U.S.C. section 2615(a)(2).
- 5.4 By engaging in the above-referenced conduct, Defendant acted in bad faith and without reasonable grounds for believing that Defendant's conduct was not a violation of 29 U.S.C. section 2615.

5.5 As a direct and proximate cause of Defendant's unlawful conduct, Plaintiff has suffered lost wages, salary, and employment benefits.

VI. Causes of action: Disability Discrimination

- 6.1 Plaintiff asserts Paragraphs 4.1 through 4.7 herein and incorporates those statements by reference here.
- 6.2 Based on the above facts, Defendant's termination of Plaintiff violated the Americans with Disabilities Act ("ADA"), 42 U.S.C. section 12101, et. seq., when Defendant discriminated against her and retaliated against her because of her severe depression.
- 6.3 Defendant acted with malice or reckless indifference in engaging in the discriminatory practice and retaliation against Plaintiff.
- As a direct and proximate cause of the Defendant's arbitrary and capricious acts, the Plaintiff has suffered lost wages in the past and in the future, lost salary, and lost employment benefits, and grievous harm, including but not limited to, humiliation, embarrassment, emotional pain and suffering, inconvenience, mental anguish, and future pecuniary losses.

VII. CAUSES OF ACTION: VIOLATIONS OF TEXAS LABOR CODE

- 7.1 Plaintiff asserts Paragraphs 4.1 through 4.7 herein and incorporates those statements by reference here.
- 7.2 Based on the above facts, Defendant's termination of Plaintiff violated Chapter 21 of the Texas Labor Code when Defendant discriminated against Plaintiff and retaliated against Plaintiff because of her severe depression. Tex. Labor Code Ann. § 21.001, et. seq.
- 7.3 Defendant acted with malice or reckless indifference in engaging in the discriminatory practice and retaliation against Plaintiff.
- 7.4 As a direct and proximate cause of the Defendant's unlawful conduct, Plaintiff has suffered lost wages in the past and in the future, lost salary, and lost employment benefits,

Certified Document Number: 47697907 - Page 5 of 7

and grievous harm, including but not limited to, humiliation, embarrassment, emotional pain and suffering, inconvenience, mental anguish, and future pecuniary losses.

VIII. ATTORNEY FEES

8.1 Plaintiff is entitled to recover attorney fees, expert fees, and costs for bringing this action. 29 U.S.C. § 2617(a)(3); 42 U.S.C. § 12205; 42 U.S.C. § 2000e-5(k); Tex. Labor Code § 21.259.

IX. CONDITIONS PRECEDENT

- 9.1 On or about January 22, 2010, Plaintiff filed a charge with the Texas Workforce Commission and Equal Employment Opportunity Commission alleging disability discrimination and retaliation.
- 9.2 All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

X. DEMAND FOR JURY

10.1 Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

XI. PRAYER

- 11.1 For these reasons, Plaintiff asks that Defendant be cited to appear and answer and prays that the Court declare Defendant's conduct a violation of Plaintiff's rights and enter judgment against Defendant for Plaintiff, and award Plaintiff relief including the following:
 - (a) Actual damages;
 - (b) Back-pay and front-pay;
 - (c) Lost wages and salary, for the past and in the future;
 - (d) Lost employment benefits;
 - (e) Compensatory damages;

Certified Document Number: 47697907 - Page 6 of 7

- (f) Liquidated damages;
- (g) Punitive damages;
- (h) Pre-judgment and post-judgment interest;
- (i) Attorneys' fees, expert fees, and costs in this action; and
- (j) All other relief that is proper and just.

REQUEST FOR DISCLOSURE

Defendant is requested to disclose, pursuant to Rule 194 of the Texas Rules of Civil Procedure, within 50 days of service of this request, the information or material described in Rule 194.2.

REQUESTS FOR PRODUCTION

Plaintiff serves this request for production, pursuant to Rule 196 of the Texas Rules of Civil Procedure, as follows:

- 1. Produce Ilia Fox's complete and entire personnel file, human resources records, and payroll records, including but not limited to, all and any performance reviews and evaluations, disciplinary actions and/or reprimands, and payroll information.
- 2. Produce any and all documents and correspondence that Defendant sent to and received from the Texas Workforce Commission and/or Equal Employment Opportunity Commission regarding Ilia Fox.
- 3. Produce any and all employee manuals and/or handbooks, and employer policy and procedure manuals and/or handbooks that were applicable during the period of Ilia Fox's employment (2004 to 2009).

Certified Document Number: 47697907 - Page 7 of 7

Respectfully submitted,

SCHIRRMEISTER DIAZ-ARRASTIA BREM LLP

By: State Bar No. 00791152

Paige Boone

State Bar No. 24044659

Pennzoil Place – North Tower 700 Milam, 10th Floor Houston, Texas 77002

(713) 221-2500

(713) 228-3510 (fax)

ATTORNEYS FOR PLAINTIFF ILIA FOX



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this January 28, 2011

Certified Document Number:

47697907 Total Pages: 7

Chris Daniel, DISTRICT CLERK

HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

Filed 11 March 7 A9:24 Chris Daniel - District Clerk Harris County ED101J016207449 By: Sandra Talbert

CAUSE NO. 2011-06082

ILIA FOX,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
	§	
WEEKLEY HOMES LP d/b/a	§	
DAVID WEEKLEY HOMES,	§	
	§	
Defendant.	§	234th JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

Defendant Weekley Homes, L.P., incorrectly identified as Weekley Homes LP d/b/a David Weekley Homes ("Weekley" or "Defendant"), ¹ files this its Original Answer to Plaintiff's Original Petition and respectfully shows the Court as follows:

I. GENERAL DENIAL

- 1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Weekley generally denies each and every material allegation contained in Plaintiff's Original Petition, and requests that Plaintiff be made to prove her charges by a preponderance of the evidence as required by the constitution, statutes, laws, and Rules of Civil Procedure for the State of Texas.
 - 2. Weekley reserves the right to amend its Answer.

II. AFFIRMATIVE DEFENSES

- 1. Plaintiff has failed to state a claim upon which relief can be granted.
- 2. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

¹ The proper name of the entity that employed Plaintiff is Weekley Homes, L.P.

- 3. Plaintiff has failed to timely and properly exhaust her administrative remedies.
- 4. Plaintiff has failed to satisfy conditions precedent to filing suit and to recover from Defendant.
- 5. Plaintiff, in whole or in part, has failed to mitigate her damages. Additionally, Defendant is entitled to an offset for any mitigation or unemployment compensation benefits received by Plaintiff.
- 6. To the extent Plaintiff seeks equitable relief, Plaintiff is not entitled to a trial by jury.
- 7. All actions taken by Defendant with respect to Plaintiff's employment were taken for legitimate, nondiscriminatory and non-retaliatory reasons, in good faith, and without reckless indifference or malice.
- 8. Pleading in the alternative, any employment actions taken with respect to Plaintiff would have been taken in the absence of any alleged impermissible factors. Similarly, and again in the alternative, in response to any alleged evidence of discrimination or retaliation that may be produced by Plaintiff, any alleged adverse employment actions and/or decisions taken with respect to Plaintiff would have occurred notwithstanding such alleged evidence.
- 9. Pleading in the alternative and in response to any alleged evidence of discrimination or retaliation that may be produced by Plaintiff, actions of discrimination or retaliation on the part of Defendant's employees were contrary to Defendant's good faith efforts to comply with the Family Medical Leave Act, 29 U.S.C. 2601, et seq. ("FMLA"), the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. ("ADA"), the Texas Commission on Human Rights Act, Tex. Lab. Code § 21.001, et seq. ("TCHRA"), and any other statute.

- 10. To the extent Plaintiff seeks relief under the ADA, the TCHRA, or any antidiscrimination statute, Plaintiff is estopped and barred from alleging in this action matters which were not properly alleged or within the scope of a charge of discrimination timely filed with the Equal Employment Opportunity Commission, or similar state agency, including the Texas Workforce Commission.
- 11. If Plaintiff is able to prove that Defendant acted in violation of the FMLA, which is denied, such action was in good faith and based upon a reasonable belief that such action was not a violation of the FMLA. Thus, liquidated damages would not be warranted.
- 12. Defendant alternatively pleads that Plaintiff cannot recover punitive damages for any alleged discrimination, because any such alleged discrimination would be contrary to Defendant's good faith efforts to comply with the laws governing such conduct.
- 13. Pleading in the alternative, and without admitting any of the allegations contained in Plaintiff's Complaint, to the extent that Plaintiff's Complaint, and each alleged cause of action therein, seeks punitive damages, it violates Defendant's rights to procedural and substantive due process and Defendant's rights to protection from "excessive fines" as provided in the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of the Constitution of the State of Texas and, therefore, fails to state a cause of action upon which punitive or exemplary damages can be awarded.
- 14. Defendant is entitled to the damages caps and limitations contained in the TCHRA, the United States Constitution, the Constitution of the State of Texas, and all other applicable laws.

15. Defendant reserves the right to assert additional affirmative defenses and other matters at such time and to the extent warranted by the discovery and factual development in this

case.

III. DEFENDANT'S ATTORNEYS' FEES AND COSTS

16. Defendant is entitled to recover all attorneys' fees, expert witness fees and costs

against Plaintiff.

Wherefore, premises considered, Defendant requests that Plaintiff take nothing by this

suit and that Defendant recover all of its attorneys' fees, costs, and expert fees, and all other

relief at law or in equity, to which Defendant is justly entitled.

Respectfully submitted,

/s/ Ted D. Meyer

Ted D. Meyer State Bar No. 13997500

MEYER WHITE LLP

600 Travis, Suite 900

Houston, Texas 77002

Telephone: 713.951.1400 Facsimile: 713.951.1499

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Telephone: 713.951.1400
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ATTORNEYS FOR DEFENDANT WEEKLEY HOMES, L.P.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent to the below counsel of record via certified mail, return receipt requested, on this 7th day of March, 2011.

Carolyn Roch Henneman
Paige Boone
Schirrmeister Diaz-Arrastia Brem LLP
Pennzoil Place – North Tower
700 Milam, 10th Floor
Houston, Texas 77002

/s/ Ted D. Meyer
Ted D. Meyer

EXHIBIT D

EXHIBIT E

Harris County Docket Sheet

2011-06082

COURT: 234th

FILED DATE: 1/28/2011

CASE TYPE: EMPLOYMENT DISCHARGE



FOX, ILIA

Attorney: HENNEMAN, CAROLYN ROCH

VS.

WEEKLEY HOMES L P (D/B/A DAVID WEEKLEY H

Docket Sheet Entries			
	Date	Comment	



STATE OF TEXAS
COUNTY OF HARRIS

I, Chris Daniel, District Clerk of Harris County, Jexas, cartify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard-copy, as it appears on this date.

Witness my official hand and special office this

CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Deputy

EXHIBIT F

LIST OF ALL COUNSEL OF RECORD

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ATTORNEYS FOR PLAINTIFF, ILIA FOX